

# SENATE BILL No. 341

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-15; IC 24-9; IC 25-34.1; IC 36-2-11-16.

**Synopsis:** Credit services and real estate transactions. Amends the definition of "credit services organization" for purposes of the law governing such entities to include a person that does or offers to do any of the following on behalf of a buyer: (1) Obtain a lower interest rate with respect to a consumer loan or a residential mortgage loan. (2) Provide debt settlement services. Amends the law concerning the disclosures that a credit services organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. Provides that before a credit services organization may do business in Indiana, it must file a copy of the required surety bond or irrevocable letter of credit with the attorney general. Prohibits a person from maintaining or offering to maintain an account for the receipt of funds in an escrow transaction unless the person is a specified financial institution. Prohibits a person from managing residential real estate in Indiana unless the person possesses: (1) legal title to the property; (2) a real estate salesperson license; or (3) a real estate broker license. Provides that in a real estate transaction involving a land contract between the seller and the buyer, the seller must give to the buyer, at certain specified times, written notice of any encumbrance that affects the title to the real estate. Provides that upon the suspension of a principal  
(Continued next page)

**Effective:** July 1, 2010.

**Bray**

January 11, 2010, read first time and referred to Committee on Judiciary.



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broker's license, the real estate commission (commission) shall take custody of each trust account maintained by the principal broker on behalf of others. (Current law requires the commission to take custody of a principal broker's trust accounts upon only the expiration or revocation of the broker's license.) Removes an incorrect cross-reference in the statute concerning real estate brokers and salespersons. Allows a county recorder to refuse to record a deed if the recorder has reason to believe the deed is fraudulent or has been altered in a way that makes it unreliable or inaccurate.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 341

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 24-5-15-2, AS AMENDED BY P.L.171-2006,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2010]: Sec. 2. (a) As used in this chapter, "credit services  
4       organization" means a person that, with respect to the extension of  
5       credit by another person, sells, provides, performs, or represents that  
6       the person can or will sell, provide, or perform, in return for the  
7       payment of money or other valuable consideration, any of the following  
8       services:

9               (1) Improving a buyer's credit record, credit history, or credit  
10              rating.

11             (2) Obtaining an extension of credit for a buyer.

12             (3) Obtaining a delay or forbearance of a buyer's obligation under  
13             a mortgage.

14             **(4) Obtaining a lower interest rate for:**

15               **(A) a consumer loan; or**

16               **(B) a residential mortgage loan;**

17             **to which the buyer is a debtor or a prospective debtor.**



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**(5) Providing debt settlement services on behalf of a buyer.**

~~(4) (6)~~ Providing advice or assistance to a buyer concerning the services described in ~~subdivision~~ **subdivisions (1) (2), or (3) through (5).**

(b) The term "credit services organization" does not include any of the following:

(1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).

(2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.

(3) A credit union doing business in Indiana.

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

SECTION 2. IC 24-5-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization must provide the buyer with a written statement that contains the following:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.

(2) A statement explaining the buyer's right to proceed against the bond or surety account required under section 8 of this chapter.

(3) The name and address of the:

(A) surety company that issued a bond; or

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(B) depository and the trustee of a surety account and the account number of the surety account; required under section 8 of this chapter.

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) A statement that the buyer's file is available for review:

(A) at no charge ~~on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied;~~ **at the times and under the circumstances set forth in 15 U.S.C. 1681j;** and

(B) for a minimal charge at any other time **as provided by 15 U.S.C. 1681j(f).**

(6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

SECTION 3. IC 24-5-15-8, AS AMENDED BY P.L.171-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Before doing business in Indiana, a credit services organization must:

**(1) obtain a surety bond in the amount of twenty-five thousand dollars (\$25,000), issued by a surety company authorized to do business in Indiana in favor of the state for the benefit of a person that is damaged by a violation of this chapter; and**

**(2) file a copy of the surety bond obtained under subdivision (1) with the attorney general.**

(b) The attorney general may waive the bonding requirement under subsection (a) and, instead of the bond, accept an irrevocable letter of credit for an equivalent amount issued in favor of the state for the benefit of a person that is damaged by a violation of this chapter. **A credit services organization that obtains an irrevocable letter of credit under this subsection must file a copy of the irrevocable letter of credit with the attorney general before doing business in**

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**Indiana.**

SECTION 4. IC 24-9-3-7, AS AMENDED BY P.L.105-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

(1) A home loan subject to this article.

(2) **To the extent allowed under federal law**, a loan described in IC 24-9-1-1 that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

(A) designed primarily for occupancy of one (1) to four (4) families; and

(B) that is or will be occupied by a borrower as the borrower's principal dwelling.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

**(A) that is located in Indiana; and**

**(B)** upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

**(A) that is located in Indiana; and**

**(B)** upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by

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a borrower as the borrower's principal dwelling.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

- (1) that is located in Indiana;
- (2) upon which there is a dwelling; and
- (3) that is classified as residential for property tax purposes.

(c) A person may not **do any of the following**:

(1) Divide a **home** loan transaction into separate parts with the intent of evading a provision of this article.

(2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the **home** loan would be a high cost home loan if the home loan had been structured as a closed-end loan.

(3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.

(4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law. ~~or~~

(5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

- (i) certain terms or conditions; or
- (ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

**(6) Maintain or offer to maintain an account for the receipt of funds from a closing agent in an escrow transaction (as defined in IC 27-7-3.7-3) unless the person is a:**

- (A) bank;**
- (B) savings and loan association;**
- (C) credit union; or**
- (D) savings bank;**

**that is chartered under the laws of a state or the United States, as described in IC 27-7-3.7-2.**

**(7) Manage real estate described in subsection (b) unless the person possesses:**

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(A) legal title to the property;

(B) a salesperson license under IC 25-34.1; or

(C) a broker license under IC 25-34.1.

(8) Fail to provide the notice required under subsection (d), within the time specified in subsection (d), if the person is a seller in a real estate transaction described in subsection (d).

(d) This subsection applies to a real estate transaction that involves a land contract between the seller and the buyer in the transaction. If the real estate that is the subject of the transaction is subject to any encumbrance, including any tax lien, foreclosure action, legal judgment, or other encumbrance affecting the title to the real estate, the seller must provide written notice of the encumbrance to the buyer:

(1) not later than the time the land contract is executed, if the encumbrance is created before or at the time the land contract is executed; or

(2) not later than ten (10) business days after the encumbrance is created, if the encumbrance is created after the land contract is executed.

SECTION 5. IC 24-9-5-4, AS AMENDED BY P.L.105-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) This section does not apply to a violation of IC 24-9-3-7(c)(4), ~~or~~ IC 24-9-3-7(c)(5), **IC 24-9-3-7(c)(6), or IC 24-9-3-7(c)(7).** A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts

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required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

SECTION 6. IC 25-34.1-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Each principal broker:

(1) shall keep in one (1) or more trust accounts (interest or noninterest bearing) all funds belonging to others that come into the possession of the principal broker or of any associated salesperson or broker-salesperson; and

(2) shall clearly identify any account containing those funds as a trust account. The trust accounts shall contain all earnest money deposits, funds held for closing escrows, sale proceeds not yet disbursed, and all other funds belonging to others.

(b) The principal broker shall not use any trust account for the deposit of any personal funds or other business funds and shall keep a detailed record of the funds and any interest accrued in each trust account that identifies the amount of funds held for each beneficiary. Any interest earned shall be held for the beneficiary.

(c) Upon the death or termination of a principal broker or the expiration, ~~or~~ revocation, **or suspension** of the principal broker's license, the commission shall take custody of each trust account and may appoint a successor trustee to protect and distribute the proceeds of that account.

SECTION 7. IC 25-34.1-6-2.5, AS ADDED BY P.L.105-2009,

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SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2.5. (a) A violation of:

- (1) IC 24-5-15; or
- (2) IC 24-5.5;

by a person licensed or required to be licensed under this article is a violation of this article.

(b) A person who commits a violation described in subsection (a) commits a Class A infraction and is subject to:

- (1) the enforcement procedures described in section 2 of this chapter; and
- (2) any sanction that may be imposed by the commission under IC 25-1-11-12. ~~for an act described in IC 25-1-11-11.~~

SECTION 8. IC 36-2-11-16, AS AMENDED BY P.L.129-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) This section does not apply to:

- (1) an instrument executed before November 4, 1943;
- (2) a judgment, order, or writ of a court;
- (3) a will or death certificate; or
- (4) an instrument executed or acknowledged outside Indiana.

(b) Whenever this section prescribes that the name of a person be printed, typewritten, or stamped immediately beneath the person's signature, the signature must be written on the instrument, directly preceding the printed, typewritten, or stamped name, and may not be superimposed on that name so as to render either illegible. However, the instrument may be received for record if the name and signature are, in the discretion of the county recorder, placed on the instrument so as to render the connection between the two apparent.

(c) Except as provided in subsection (d), the recorder may receive for record an instrument only if all of the following requirements are met:

- (1) The name of each person who executed the instrument is legibly printed, typewritten, or stamped immediately beneath the person's signature or the signature itself is printed, typewritten, or stamped.
- (2) The name of each witness to the instrument is legibly printed, typewritten, or stamped immediately beneath the signature of the witness or the signature itself is printed, typewritten, or stamped.
- (3) The name of each notary public whose signature appears on the instrument is legibly printed, typewritten, or stamped immediately beneath the signature of the notary public or the signature itself is printed, typewritten, or stamped.
- (4) The name of each person who executed the instrument appears

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identically in the body of the instrument, in the acknowledgment or jurat, in the person's signature, and beneath the person's signature.

(5) If the instrument is a copy, the instrument is marked "Copy".

(d) The recorder may receive for record an instrument that does not comply with subsection (c) if all of the following requirements are met:

(1) A printed or typewritten affidavit of a person with personal knowledge of the facts is recorded with the instrument.

(2) The affidavit complies with this section.

(3) The affidavit states the correct name of a person, if any, whose signature cannot be identified or whose name is not printed, typewritten, or stamped on the instrument as prescribed by this section.

(4) When the instrument does not comply with subsection (c)(4), the affidavit states the correct name of the person and states that each of the names used in the instrument refers to the person.

(5) If the instrument is a copy, the instrument is marked "Copy".

(e) **Except as provided in subsection (g),** the recorder shall record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

(1) the document complies with other statutory recording requirements; and

(2) the document or copy will produce a clear and unobstructed copy.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section. A recorded copy shall have the same effect as if the original document had been recorded.

**(g) The recorder may refuse to record a deed if the recorder has reason to believe the deed is fraudulent or has been altered in a way that makes it unreliable or inaccurate.**

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